

1 89. Despite having received notice of his
2 claims in March 2008, and despite having
3 been served with Swinegar's lawsuit, TWC
4 decided to destroy the recording of the very
conversation which it now asks this Court to
rely on to terminate Swinegar's lawsuit.

5 Exh.24, Shimonovitz Depo, Vol. 2 at 208/2-5.

6 90. Shimonovitz testified that Swinegar's
7 March 2008 call was also recorded, and was
8 available for review up to, at a minimum, July
2008, three months after the filing of the
present lawsuit.

9 Exh. 24, Shimonovitz Depo, Vol. 2, at 211/8 -
10 212/4.

11 91. However, even though it is undisputed
12 that TWC had knowledge of Swinegar's
13 claims against it before July 2008, TWC
14 likewise chose to destroy this recording as
well.

15 Exh. 24, Shimonovitz Depo, Vol. 2, at 211/8 -
16 212/4.

17 92. TWC's CSRs are not required to obtain a
18 customer's affirmative request for equipment
19 before including it in their order.

20 Exh. 11, Pemberton Depo at 67/17 - 70/20.
21 Exh. 12, Smith Depo at 72/7 - 73/7.

22 93. TWC's computerized billing system,
23 ACSR, automatically adds a remote to each
24 customer's order for every converter included
25 in the order.

26 Exh. 12, Smith Depo at 113/9 - 114/7.

27 94. TWC CSRs are not trained to inform, and
28 do not inform, customers that they will
receive a remote with every converter, or that
they will pay a separate monthly fee for each
remote they receive.

Exh. 12, Smith Depo at 117/25 - 119/9.

1 95. TWC's computerized billing system,
2 ACSR, does not permit TWC CSRs to delete
3 a remote from a customer's order, even if the
customer asks that it be deleted.

4 Exh. 11, Pemberton Depo at 119/12-21.
5 Exh. 12, Smith Depo at 118/7 - 119/9.

6 96. Swinegar had no discussion with the
7 installer regarding the equipment on his work
order, did not read the work order before he
8 signed it and considered it to be for the work
the installer did.

9 Exh. 8, Swinegar Depo., pages 75-80.

10
11 Dated: April 20, 2010

DOUGLAS CAIAFA, APLC
LAW OFFICE OF CHRISTOPHER J. MOROSOFF

12
13
14 By: _____
15 DOUGLAS CAIAFA
Attorneys for Plaintiffs

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Exhibit 4



E-Transcript of the Testimony of
Adrina Smith

Date: February 26, 2010
Volume: I

Case: Swinegar v. Time Warner Cable, Inc.

Citywide Reporters
Phone: 800/524-8525
Fax: 661/255-2782
Email: citywidereporters@sbcglobal.net
Internet: www.citywide-reporters.com

1 package, which is what I described, on the additional TV.
 2 And the programming fee is -- that's what it is. It's
 3 the charge to have those services on the additional TV.
 4 Q Do you know what the \$2 covers? Do you
 5 understand my question?
 6 MR. ESCHER: I'm going to object, vague.
 7 Q BY MR. MOROSOFF: Do you know; are customers
 8 receiving an additional service from Time Warner that
 9 they are paying that \$2 for?
 10 A Yes.
 11 Q What is that service?
 12 A The service that I just --
 13 MR. ESCHER: Asked and answered.
 14 MR. MOROSOFF: Go ahead.
 15 THE WITNESS: -- the service I described, the
 16 digital cable; that has the broadcast, basic cable, the
 17 digital tier, the On-demand service, the interactive
 18 guide and digital music.
 19 Q BY MR. MOROSOFF: Does that cost
 20 Time Warner Cable any additional money to provide that
 21 service on a second TV, in a customer's home, to your
 22 knowledge?
 23 MR. ESCHER: Objection, vague.
 24 THE WITNESS: I don't know.
 25 Q BY MR. MOROSOFF: Does Time Warner have to do

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1 you they don't want to pay the digital programming
 2 fee --
 3 A (No audible response.)
 4 Q -- to the best of your recollection?
 5 A I don't recall.
 6 Q Have you ever been trained to discuss the
 7 digital programming fee with customers?
 8 A I don't remember.
 9 Q Is there a separate box on the ACSR system for
 10 the digital programming fee?
 11 A No.
 12 Q The digital programming fee is for an
 13 additional service; correct?
 14 A Yes.
 15 Q But that service is not listed on the ACSR
 16 system; correct?
 17 MR. ESCHER: Objection, vague.
 18 THE WITNESS: It's in the additional digital -- box,
 19 equipment on package.
 20 I can show it to you, if you'd like me to.
 21 MR. MOROSOFF: Sure (handing.)
 22 We're looking, for the record, at
 23 Time Warner Cable, Bates stamped document "0557," which
 24 I'm going to probably mark as an exhibit, as soon as I
 25 have a chance to make a copy.

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1 any extra digital programming for each additional box,
 2 to your knowledge?
 3 MR. ESCHER: Objection, vague.
 4 THE WITNESS: I don't know.
 5 Q BY MR. MOROSOFF: Are you supposed to ask a
 6 customer if they want this extra service, you just
 7 described?
 8 MR. ESCHER: Objection, vague.
 9 THE WITNESS: Yes. I ask them -- after I ask them,
 10 "Do you want digital cable on the additional TVs -- with
 11 the digital tier, the On-demand service, interactive
 12 guide, digital -- do you want that service on the
 13 additional TVs," and the customer will answer "yes" or
 14 "no."
 15 Q BY MR. MOROSOFF: Okay. Has a customer ever
 16 asked you what the digital programming fee was for?
 17 A Yes.
 18 Q What do you tell them, exactly, what you just
 19 told me?
 20 A Exactly.
 21 Q Can a customer get an additional cable box
 22 without paying the digital programming fee?
 23 MR. ESCHER: Objection, vague.
 24 THE WITNESS: No.
 25 Q BY MR. MOROSOFF: Has a customer ever told

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1 But, go ahead.
 2 THE WITNESS: Okay. See this item, it says "Digital
 3 A.O. Pack --"
 4 MR. MOROSOFF: Okay.
 5 THE WITNESS: "-- 8.50."
 6 MR. MOROSOFF: Okay.
 7 THE WITNESS: That's what it is.
 8 Q BY MR. MOROSOFF: What does "A.O." stand for?
 9 A "Additional outlet."
 10 Q So is it accurate to say that, when a customer
 11 orders an additional box, the system automatically
 12 charges the customer the extra \$2?
 13 A Yes.
 14 Q And you, as a CSR, do you have the ability to
 15 waive that \$2 fee?
 16 A No.
 17 Q Ever?
 18 A No.
 19 MR. MOROSOFF: I will mark this as an exhibit --
 20 because we've used it a lot -- when we take a short break
 21 and we can have it, there, in front of us. Sorry.
 22 Q Before you add this digital programming fee to
 23 the customer's order, are you supposed to have the
 24 customer request that service?
 25 MR. ESCHER: Objection, vague.

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Exhibit 5

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

FEB 23 2009
John Clark, Executive Officer/Clerk
By K. Krystkiewicz
K. KRYSKIEWICZ

FEB 23 2009

John Clark, Executive Officer/Clerk
By K. Krystkiewicz
KATHERINE KRYSKIEWICZ Deputy

MARK SWINEGAR, an individual; and
MICHELE OZZELLO-DEZES, an individual;
Individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

TIME WARNER CABLE, INC., a Delaware
Corporation; and DOES 1 through 1,000
Inclusive,

Defendants.

Case No.: BC389755

ORDER OVERRULING DEMURRER
TO SECOND AMENDED COMPLAINT

I.

BACKGROUND

This is a class action for restitution and injunctive relief brought by persons who have at some time between April 28, 2004, and the present paid a rental fee to Defendant Time Warner Cable, Inc. ("TWC") for the use of a cable television converter box and/or remote control device within the state of California which they did not affirmatively request by name with their cable service. Putative class plaintiffs Mark Swinegar and Michele Ozzello-Dezes were customers of TWC and bring this action on behalf of others similarly situated.

Plaintiffs' allegations, as reflected in their Second Amended Class Action Complaint, rest on a single cause of action for unlawful business practices pursuant to California Business & Professions Code §17200, *et seq.*, predicated on a violation of the Cable Television

1 Consumer Protection and Competition Act of 1992, 47 U.S.C. §543(f). The Second Amended
2 Complaint was preceded by a Complaint, which had contained allegations pursuant to Business
3 & Professions Code §17200, *et seq.*, but had phrased the alleged violation in terms of TWC
4 charging cable subscribers for a "converter box that plaintiffs did not need" with their cable
5 service. TWC demurred to the Complaint, primarily on grounds of standing, and plaintiffs
6 amended as of right. Plaintiffs then filed a First Amended Complaint, which contained
7 allegations that TWC had violated Business & Professions Code §17200, California Civil Code
8 §1750, and 47 U.S.C. §543(f). Plaintiffs alleged that they were charged for a converter box that
9 plaintiffs "did not affirmatively request by name" with their TWC service. Thereafter, TWC
10 served a motion for sanctions on plaintiffs. The Court heard oral argument from the parties, who
11 conceded that the First Amended Complaint contained defects, and the Court allowed plaintiffs
12 to amend pursuant to the safe harbor provision of Code of Civil Procedure §128.7. The Second
13 Amended Complaint was subsequently filed, alleging a single cause of action for Business &
14 Professions Code §17200, *et seq.*

15 On January 30, 2009, the Court heard oral arguments concerning TWC's demurrer.
16 Defendant TWC argued that the first cause of action fails because the Second Amended
17 Complaint is uncertain and fails to allege facts constituting a violation of 47 U.S.C. §543(f).
18 TWC also argued that plaintiffs have not pled facts sufficient to support standing under the
19 California Business & Professions Code §17200 *et seq.*, and that the putative class is not
20 amenable to certification. The Court expressed a tentative that the allegations probably
21 supported a cause of action for fraudulent and unfair business practices under the Business and
22 Professions Code §17200. It found, however, that the pleadings were currently confined to
23 "unlawful" business practices based on a violation of 47 U.S.C. §543(f). After hearing from
24 both parties, the Court took the matter under submission to further consider the parties'
25 arguments and authorities concerning whether plaintiffs could state a claim under §17200 for a

1 violation of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C.
2 §543(f). Having so considered, the Court now issues its ruling:

3 II.

4 DISCUSSION

5 A. 47 U.S.C. §543(f)

6 Defendant TWC argues that the first cause of action fails because the Second Amended
7 Complaint is uncertain and fails to allege facts constituting a violation of 47 U.S.C. §543(f).
8 Although the plaintiffs' legal theories have evolved since the filing of the Complaint, the
9 ultimate factual premise is the following: (1) That plaintiffs were TWC cable subscribers who
10 paid for and subscribed to a level of service but did not affirmatively request the equipment, i.e.,
11 a converter box, with that service. (2) That TWC represented that their cable subscription would
12 be at specified rate or charge. (3) That after receiving the converter box and without their
13 request or consent, they were subsequently charged for rental of the equipment, which was
14 necessary to receive their cable service. These allegations are adequately certain and defendant's
15 demurrer under Code of Civil Procedure section 430.10(f) should be overruled on this ground.

16 The primary question presented concerns whether the Cable Television Consumer
17 Protection and Competition Act of 1992, 47 U.S.C. §543(f), will provide a basis for a cause of
18 action pursuant to §17200, i.e., whether TWC's conduct, as alleged, is within the scope of
19 billing practices §543(f) seeks to prevent. Plaintiffs allege that defendant TWC has violated and
20 continues to violate §17200 by charging its cable customers monthly rental fees for cable
21 converter boxes and remote control devices (i.e., "equipment") without first obtaining the
22 customers' affirmative request for such equipment in violation of 47 U.S.C. §543(f) and
23 specifically in violation of the Cable Act's prohibition against "negative option billing."

24 In interpreting the language of 47 U.S.C. §543(f), the Court must look first to the words
25 or plain meaning of the statutory language, Delancy v. Superior Court (1990) 50 Cal.3d 785, 798

1 ("if the language is clear and unambiguous there is no need for construction, nor is it necessary
2 to resort to indicia of the intent of the Legislature"), then to the statute's legislative history, and
3 finally to the reasonableness of a proposed construction. Id.; MacIsaac v. Waste Management
4 Collection & Recycling, Inc. (2005) 134 Cal.App.4th 1076, 1082. The relevant statute, 47 U.S.C.
5 §543(f), provides, "a cable operator shall not charge a subscriber for any service or equipment
6 that the subscriber has not affirmatively requested by name." It further states: "a subscriber's
7 failure to refuse a cable operator's proposal to provide such service or equipment shall not be
8 deemed to be an affirmative request for such service or equipment." Thus, the plain language is
9 clear and would require plaintiffs to plead that they did not affirmatively request equipment from
10 their cable operator and that it was nonetheless supplied and billed to plaintiffs.

11 Defendant argues that §543(f) requires only "consent" to be charged for equipment,
12 rather than an actual "affirmative request" for the equipment "by name" as expressly provided
13 by the words of the statute themselves. The Court recognizes that the argument between the
14 parties concerning whether §543(f) requires only "consent" rather than a "request" is largely the
15 result of plaintiffs' representations that a signature on a work order may not be an affirmative
16 request and is therefore insufficient to comply with the statute. Additionally, there were
17 discussions at oral argument concerning whether the procedures for obtaining cable service on-
18 line, through TWC's website, would be sufficient. The Court cannot resolve these questions at
19 this stage and expresses no ruling on whether a work order signature for either of putative
20 representatives Mark Swinegar and Michele Ozzello-Dezes, or an on-line billing request for
21 cable service accompanied by equipment, would comply with §543(f), without knowledge of
22 TWC's specific billing practices during the applicable time period and without evidence
23 concerning how the representative plaintiffs were billed or requested their service or equipment.

24 However, the Court finds that the plain language is unambiguous and that the statute
25 unequivocally requires an "affirmative request by name." This interpretation is supported by the

1 second sentence of the statute that "a subscriber's failure to refuse a cable operator's proposal to
2 provide such service or equipment shall not be deemed to be an affirmative request for such
3 service or equipment." An interpretation of affirmative request to "assent" would directly
4 contradict the words of the statute and the clear purpose of the Act, which was to protect
5 consumers and promote competition through regulation of cable operators. Although more
6 limited in scope, §543(f) is a consumer protection statute as is Business Professions Code
7 §17200. That a cable subscriber must make an affirmative request for cable service or
8 equipment is underscored by the legislative history of the Act, which addressed "negative
9 option" billing. See 16 C.F.R. §310.2(t) ("A 'negative option feature' is any provision under
10 which the consumer's silence or failure to take an affirmative action to reject goods or services
11 or to cancel the agreement is interpreted by the seller as acceptance of the offer.") The Court
12 does not see that it should depart from the statute's plain language in light of §543(f)'s purposes
13 and legislative history.

14 The Court recognizes that this case is different from those addressed in FCC opinions
15 briefed by the parties concerning negative option billing; as the practices here concern signing
16 up a subscriber for an initial cable service, rather than rearranging the way the same services or
17 equipment are offered. See for example, In re Warner Cable Commc'ns, 10 C.F.F.R. 2103, 2105
18 ¶13 (Jan. 19, 1995) and other cases cited in defendant's memorandum at 5-6. In re Monmouth
19 Cablevision 10 F.C.C.R. 9438 (Aug. 11, 1995), the case relied on by plaintiffs, is nearer to this
20 case as it concerned a fundamental change in the way equipment was offered, i.e., a monthly
21 rate of \$1.00 per unit versus a \$5.00 charge for purchase of remote control but is still not on
22 point. More instructive is the Federal Communication Commission's Final Rule, which lists a
23 number of practices that might violate its rate regulation rules, depending upon individual
24 circumstances. See 59 Fed. Reg. 17,961, 17,970-71 ¶69 (Apr. 15, 1994). The FCC concluded in
25 relevant part:

1 [T]he delivery of new packages (ironically intended to represent subscriber choice)
2 without an affirmative assent from the subscriber may violate negative option
3 requirements and result in a refund to the customer. Adding previously unneeded
4 equipment and charging for that equipment in order to provide customers with the same
5 services they received previously may also be an evasion of our rules. Operators must
6 realize that these and similar practices, and other practices which directly violate or
7 evade our rules will not be permitted, and that sanctions will be imposed in appropriate
8 circumstances.

9 Id. This language certainly suggests that the Court should analyze the practices alleged by
10 plaintiffs on the facts rather than by narrowly construing the pleadings and interpreting §543(f)
11 in the hypothetical. Ultimately, §543(f) is a consumer protection measure that preserves the
12 ability of state government to regulate negative option billing. The Court, as it did when it
13 addressed the parties' arguments in oral argument, finds there is credence in plaintiffs' argument
14 that TWC, to comply with §543(f) must either receive plaintiffs' separate affirmative request for
15 equipment (whether by signature or by selecting the equipment via a TWC website), or price the
16 extra rental fee in with the entire package.

17 Defendants raise several authorities, such as Belton v. Comcast Cable Holdings, LLC
18 (2007) 151 Cal.App.4th 1224 and Dietz v. Comcast Cable, 2007 U.S. Dist. LEXIS 51388 (N.D.
19 Cal. July 11, 2007), to say that plaintiffs' interpretation of section 543(f) has been rejected by
20 courts. Belton was a case brought by a blind cable subscriber who ordered the provider's music
21 channels but had no need to access, or desire to pay for, the "basic cable" tier that the provider
22 required he purchase as a "buy through" tier to receive the music channels. The Court notes that
23 the case was on appeal from a grant of summary adjudication in favor of Comcast Cable, not on
24 demurrer. The appellate court held that the evidence showed "both plaintiffs understood" they
25 were purchasing the services they requested, and in fact agreed "under protest" to subscribe. Id.

1 at 1236-37. Here, at the pleading stage the Court has no evidence before it of an agreement by
2 plaintiffs, which might as a matter of law constitute an "affirmative request" as allowed by
3 §543(f).

4 Moreover, the federal opinion Dietz had more relevance to plaintiffs' pleadings before
5 they were amended concerning the theory that plaintiffs were billed for equipment "they did not
6 need" with that service. Plaintiffs no longer pursue that theory. The holding in Dietz is also
7 limited to, but may instruct, the impending class certification question of whether plaintiffs'
8 class allegations would be typical of the claims or defenses of the class representatives pursuant
9 to Fed. R. Civ. Proc. Rule 23(a)(3). Notably, the court found that "plaintiff did request
10 equipment by subscribing to the Digital Silver premium package" and therefore "Comcast's
11 defense will have special applicability to plaintiff's individual facts...[t]he same cannot be true
12 for all the unnamed putative class members plaintiff seeks to represent." Deitz, at 12-13 (citing
13 Belton 151 Cal.App. 4th 1224). The Court cannot conclusively find that the representative
14 plaintiffs requested their equipment when the pleadings state otherwise. Neither does the
15 holding in Detiz support striking the class allegations at the pleading stage.

16 B. Plaintiffs' standing

17 Defendant also argues that plaintiffs have not pled facts sufficient to support standing
18 under California Business & Professions Code §17200 *et seq.* After Proposition 64, no private
19 plaintiff has standing under that section unless he pleads that he "suffered injury in fact and [has]
20 lost money or property as a result of" defendant's alleged violation. Id. §17204. Few cases since
21 Proposition 64's passage have directly addressed what constitutes injury in fact or loss of money
22 as a result of unfair competition for purposes of determining standing. However, a few cases
23 decided since Proposition 64's passage found that an expenditure of money due to the
24 defendant's acts of unfair competition are sufficient to constitute injury in fact. See e.g., Aron v.
25 U-Haul Co. of California (2006) 143 Cal. App. 4th 796, 802-803 (plaintiff alleged he was

1 required to purchase excess fuel when returning rental truck); see also Laster v. T-Mobile USA
2 Inc. (S.D. Cal. 2005) 407 F. Supp. 2d 1181, 1194 (defendants advertised cellular phones as free
3 or substantially discounted when purchases with cellular telephone service, but plaintiffs were
4 required to pay sales tax on the full retail value of the phones).

5 TWC reads Plaintiffs' averments too narrowly. TWC relies on Buckland v. Threshold
6 Enterprises, Ltd. (2007) 155 Cal.App.4th 798, Hall v. Time Inc. (2008) 158 Cal.App.4th 847,
7 Medina v. Safe-Guard Prods. (2008) 164 Cal.App.4th 105, and Peterson v. Cellco P'ship (2008)
8 164 Cal.App.4th 1583, to say that the mere fact that a plaintiff paid money to a defendant for a
9 product or service at a time when it was subject to an allegedly unfair deceptive practice is
10 insufficient to support standing. But Plaintiffs' Second Amended Complaint does not allege
11 merely that Plaintiffs paid money to a defendant for a product or service at the time when it was
12 subject to an allegedly unfair deceptive practice, such as buying deceptively marked skin cream
13 where one is not deceived (Buckland), or such as buying a book that was allegedly subject to an
14 unfair and deceptive practice when the plaintiff did not allege he did not want the book (Hall).
15 Medina and Peterson are inapposite on these facts because those cases found that actual
16 economic injury was not suffered by individuals who bought actual and effective insurance from
17 an unlicensed agent based on remote grounds that the agent was unlicensed.

18 Plaintiffs' Second Amended Complaint alleges that both representative plaintiffs received
19 converter boxes and remote control devices from TWC, both plaintiffs paid rental fees to TWC
20 for the use of those cable converter boxes and/or remote control devices, that defendant received
21 substantial sums of money from plaintiffs and other similarly situated subscribers as a result of
22 its unlawful business practices, and each plaintiff has lost money as a result of defendant's
23 unlawful business practices, specifically all amounts paid by them for rental of equipment they
24 did not affirmatively request by name. See SAC ¶¶6-51. These allegations are adequate to
25 support plaintiffs' standing.

1 Defendant also argues that plaintiffs must show they relied on TWC's unlawful conduct.
2 The parties and cases interpret the "as a result of" language of Proposition 64 differently, which
3 as Hall v. Time Inc., 158 Cal. App. 4th 847, 855 n.2 put it, refers to the causation element of a
4 negligence cause of action, citing to Ladd v. County of San Mateo (1996) 12 Cal. 4th 913, 917,
5 and to the justifiable reliance element of a fraud cause of action, citing to Engalla v. Permanente
6 Medical Group, Inc. (1997) 15 Cal. 4th 951, 974. The negative option billing provision reflected
7 in §543(f) prohibits charging subscribers for equipment or services they did not affirmatively
8 request by name, and the conduct can not be understood to sound in misrepresentation or fraud,
9 although the allegations do support the concept of nondisclosure. When plaintiffs subscribed to
10 their cable service, they could not rely on a contingency (whether or not TWC would bill them
11 for equipment they did not request) that had not occurred, but they certainly relied on the price
12 terms TWC represented and the assumption that they would be treated in accordance with the
13 law. Requiring otherwise would in many cases read the "unlawful" prong out of the statute.
14 Plaintiffs have shown the required reliance and causal nexus between TWC's practices and the
15 loss of plaintiffs' money as a result of the charge of a rental fee for equipment they did not
16 affirmatively request by name. Thus, plaintiffs have standing to pursue their UCL claims.

17 III.

18 CONCLUSION

19 Defendant TWC's demurrer to Plaintiffs' first cause of action pursuant to Business &
20 Professions Code §17200, *et seq.* premised on a violation of 47 U.S.C. §543(f) is overruled on
21 all grounds stated in this order. Defendant to answer or otherwise appropriately respond by
22 March 16, 2009.

23 The case is set for a Further Status Conference in Dept. 307 on March 23, 2009 at 2:30
24 p.m. Parties to each serve and file their own separate Further Status Conference Statement by
25

1 March 19, 2009, addressing what discovery is needed, anticipated motion practice, ADR
2 interest, if any, and anticipated date for hearing a motion for class certification.

3 Dated: February 23, 2009

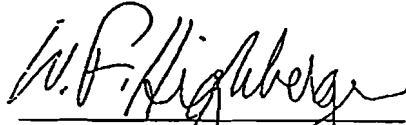
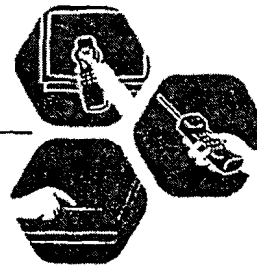
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6 WILLIAM F. HIGHBERGER
7 Judge of the Superior Court
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Exhibit 6

RESIDENTIAL SERVICES SUBSCRIBER AGREEMENT

IMPORTANT
INFORMATION
ABOUT YOUR
TIME WARNER CABLE
SERVICES



J-44692

TWC_SWIN 0002135



TIME WARNER CABLE RESIDENTIAL SERVICES SUBSCRIBER AGREEMENT

INSIDE:

- 3 Payment, Charges
- 4 Installation, Equipment and Cabling
- 5 Use of Services, TWC Equipment and Software
- 6 Special Provisions Regarding Digital Phone Service
- 6 Special Provisions Regarding HSD Service
- 7 Support, Service and Repairs
- 8 Service Interruptions: Force Majeure
- 8 Review and Enforcement
- 8 Termination of Service
- 8 Disclaimer of Warranty, Limitation of Liability
- 9 Privacy
- 9 Consent to Phone and Email Contact
- 10 Arbitration
- 10 Definitions
- 11 Information
- 11 Terms
- 11 Interpretation: Severability
- 11 Consent to Electronic Notice
- 11 Waiver
- 11 Assignment
- 11 Effect of Applicable Law, Reservation of Rights
- 11 Parental Control Device
- 11 Contingent Terms

The account holder(s) referred to on the accompanying Time Warner Cable Work Order or statement ("I," "me" or "my") agrees that the Work Order (if provided to me on or after January 1, 2006), this Agreement, the Terms of Use referred to below, and any applicable Tariff(s) on file with the state utility commission or comparable state agency in the jurisdiction in which I live, set forth the terms and conditions that govern my receipt of Services from Time Warner Cable, which may include, among others, video, high-speed data and voice Services. The term "Services" and all other capitalized terms used in this Agreement are defined in Section 15.

In consideration of TWC's provision of the Services that I have requested, subject to applicable law, I AGREE AS FOLLOWS:

1. Important Information About This Agreement

(a) This Agreement, the Work Order, the Terms of Use and any effective and applicable Tariff(s), each of which TWC may amend as set forth below, constitutes the entire agreement between TWC and me. This Agreement supersedes all previous written or oral agreements between TWC and me. I am not entitled to rely on any oral or written statements by TWC's representatives relating to the subjects covered by these documents, whether made prior to the date of my Work Order or thereafter, and TWC will have no liability to me except in respect of its obligations as described in this Agreement and the other documents referred to above. The use of my Services by any person other than me is also subject to the terms of this Agreement, the Terms of Use, and any applicable Tariff(s).

(b) TWC has the right to add to, modify, or delete any term of this Agreement, the Terms of Use, the Subscriber Privacy Notice or any applicable Tariff(s) at any time. An online version of this Agreement, the Terms of Use, the Subscriber Privacy Notice and any applicable Tariff(s), as so changed from time to time, will be accessible at <http://help.twcable.com/html/policies.html> or another online location designated by TWC, or can be obtained by calling my local TWC office.

(c) TWC will notify me of any significant change(s) in this Agreement, the Terms of Use, the Subscriber Privacy Notice or any applicable Tariff(s). Any such changes shall become effective immediately except where applicable law requires a notice period, in which case the change will become effective at the end of the requisite notice period. Upon effectiveness of any change to any of these documents, my continued use of the Services will constitute my consent to such change and my agreement to be bound by the terms of the document as so changed. If I do not agree to any such change, I will immediately stop using the Services and notify TWC that I am terminating my Services account.

(d) My acceptance of Services constitutes my acceptance of the terms and conditions contained in

this Agreement. In the event that a portion of my Services is terminated, or any aspect of it is changed, any remaining service or replacement service will continue to be governed by this Agreement.

2. Payments Charges

(a) I agree to pay TWC for (i) all use of my Services (including, if TWC is the party billing me for ISP or OLP Services, for my subscription to my choice of ISP or OLP, as applicable), (ii) installation and applicable service charges, (iii) TWC Equipment, and (iv) all applicable local, state and federal taxes and fees. Charges for the Services are set forth on a separate price list that I have received. I will be billed monthly in advance for recurring monthly charges. Other charges will be billed in the next practicable monthly billing cycle following use, or as otherwise specified in the price list. TWC may charge both the fees and the types of charges (e.g., periodic, time-based, use-based) for my Services. If I participate in a promotional offer that requires a minimum time commitment and I terminate early, I agree that I am responsible for early termination fees associated with such promotion.

(b) Charges for Installation Services and related equipment available from TWC for a standard Services installation are as described in TWC's list of charges and any applicable fee(s). Non-standard installations, if available, may result in additional charges as described in TWC's list of charges. In addition, I agree to pay charges for repair services calls resulting from my misuse of TWC Equipment or for failures in equipment not supplied by TWC.

(c) If my Services account is past due and TWC sends a collector to my premises, a field collection fee may be charged. The current field collection fee is on the price list or can be provided on request. I will also be responsible for all other expenses (including reasonable attorneys' fees and costs) incurred by TWC in collecting any amounts due under this Agreement and not paid by me.

(d) All charges are payable on the due date specified, or as otherwise indicated, on my bill. I agree that late charges may be assessed, subject to applicable law, on amounts that are past due. My failure to deliver payment by the due date is a breach of this Agreement. The current late fees are on the price list or can be provided upon request and, if applicable, will not exceed the maximum late fees as set forth by applicable law. TWC reserves the right to change the late fees.

(e) I agree that if my Services account with TWC is past due, TWC may terminate any of my Services or accounts, including Digital Phone Service. In accordance with applicable law, if I have a credit due to me or a deposit is being held on my account with TWC, I agree that the credit or deposit may be used to offset amounts past due on any other account I may have with TWC without notice to me. To reconnect any terminated Services, I may be required, in addition to payment of all outstanding balances on all accounts with TWC, to pay reconnection charges or trip charges (where applicable) and/or security deposits before reconnection.

(f) TWC may verify my credit standing with credit reporting agencies and require

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a deposit based on my credit standing or other applicable criteria. TWC may require a security deposit, or a bank or credit card or account debit authorization from me as a condition of providing or continuing to provide Services. If TWC requires a security deposit, the obligations of TWC regarding such security deposit will be governed by the terms of the deposit receipt provided by TWC to me at the time the deposit is collected. I agree that TWC may deduct amounts from my security deposit, bill any bank or credit card submitted by me, or deduct any other means of payment available to TWC, for any past due amounts payable by me to TWC, including in respect of damaged or unreturned Equipment.

(g) If I have elected to be billed by credit card, debit card or ACH transfer, I agree that I will automatically be billed each month for any amounts due under this Agreement. If I make payment by check, I authorize TWC and its agents to collect this item electronically.

(h) TWC may charge fees for all returned checks and account debit, bank card or charge card chargebacks. The current return/chargeback fees are listed in the list of charges on the price list or can be provided on request. TWC reserves the right to change return/chargeback fees.

(i) If I subscribe to HSD Service, I acknowledge that, when if TWC is billing for the HSD Service, my ISP or OLP may require a bank or credit card or account debit authorization or other assurance of payment from me, including for charges for additional or continuing Services outside the HSD Service billed by TWC that are payable under the ISP terms. I agree that TWC or ISP (and, if applicable, OLP) may bill any bank or credit card submitted by me to ISP or OLP, or collect any other means of payment available to ISP or OLP for any past due amounts payable by me to TWC. I also agree that responsibility for billing for my HSD Service subscription may be changed between TWC and ISP or OLP upon notice to me.

(j) All use of my Services, whether or not authorized by me, will be deemed my use and I will be responsible in all respects for all such use, including for payment of all charges attributable to my account (e.g., for VOD movies, merchandise ordered via Internet, international long distance charges, etc.). TWC is entitled to assume that any communications made through my Services or from the location at which I receive the Services are my communications or have been authorized by me. My Services may contain or make available information, content, merchandise, products and Services provided by third parties and for which there may be charges payable to third parties (which may include my choice of ISP or OLP and/or entities affiliated with TWC). I agree that all such charges incurred by me or attributed to my account will be my sole and exclusive responsibility and mine to pay the same when due, and shall indemnify and hold harmless the TWC parties for all liability for such charges. I agree that TWC is not responsible or liable for the quality of any content, merchandise, products or Services (or the price thereof) made available to me via the Services, for the representations or warranties made by the seller or manufacturer of any such item, or for damage to or injury, if any, resulting from the use of such item.

(d) I acknowledge that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC under its customer. Accordingly, I agree that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to me. I further agree to waive any claims I may have regarding TWC's collection or remittance of such fees, taxes and surcharges. I further understand that I may obtain a list of the fees, taxes and surcharges that my local TWC office currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.

(e) I agree that it is my responsibility to report TWC billing errors within 30 days from receipt of the bill so that service levels and all payments can be verified. If not reported within 30 days, the errors are waived.

3. Installation, Equipment and Cabling

(a) If I am not the owner of the house, apartment or other premises upon which TWC Equipment and Services are to be installed, I warrant that I have obtained the consent of the owner of the premises for TWC personnel and/or its agents to enter the premises for the purposes described in Section 3(g). I agree to indemnify and hold the TWC Parties harmless from and against any claims of the owner of the premises arising out of the performance of this Agreement (including costs and reasonable attorney's fees).

(b) I authorize TWC to make any preparations to the premises necessary for the installation, maintenance, or removal of equipment. TWC shall not be liable for any effects of normal service installation and workmanship, such as holes in walls, etc., which may remain after installation or removal of the TWC Equipment, except for damage caused by negligence on the part of TWC.

(c) The TWC Equipment is and at all times shall remain the sole and exclusive personal property of TWC, and I agree that I do not become an owner of any TWC Equipment by virtue of the payments provided for in this Agreement or the Terms of the attachment of any portion of the TWC Equipment to my residence or elsewhere. Upon termination of my Service, subject to any applicable laws or regulations, TWC may, but shall not be obligated to, retrieve any associated TWC Equipment not returned by me as required under Section 3(f) below. TWC will not be deemed to have "abandoned" the TWC Equipment if it does not retrieve such equipment.

(d) I agree to provide TWC and its authorized agents access to my premises during regular business hours upon reasonable notice during the term of this Agreement and after its termination to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove the TWC Equipment, to install Software, to conduct service level audits, or to check for signal leakage. I agree that TWC

may have reasonable access to assessments and TWC Equipment located on my grounds.

(e) TWC shall have the right to upgrade, modify and enhance TWC Equipment and Software from time to time through "downloads" from TWC's network or otherwise. Without limiting the foregoing, TWC may, at any time, employ such means to limit or increase the throughput available through individual cable modems whether or not provided by TWC.

(f) If the Services are terminated, I agree that I have no right to possess or use the TWC Equipment related to the terminated Services. As required under Section 1(d), I agree that I must arrange for the return of TWC Equipment to TWC, in the same condition as when received (excepting ordinary wear and tear), upon termination of the Services. If I do not promptly return the TWC Equipment or schedule with TWC for its disconnection and removal, TWC may enter my premises when the TWC Equipment may be located for the purpose of disconnecting and retrieving the TWC Equipment. I will pay any expenses incurred by TWC in any retrieval of the unreturned TWC Equipment. TWC may charge me a continuing monthly fee until any outstanding TWC Equipment is returned, collected by TWC or fully paid for by me in accordance with Section 3(g). The current fee is listed in the list of charges on the price list or can be provided on request.

(g) I agree to pay TWC liquidated damages in the amount demanded by TWC, but not to exceed that specified in the then-current price list for the replacement case of the TWC Equipment without any deduction for depreciation, wear and tear or physical condition of such TWC Equipment if (i) I tamper with, or permit others to tamper with, TWC Equipment, (ii) the TWC Equipment is destroyed, lost, or stolen, whether or not due to circumstances beyond my reasonable control, and even if I exercised due care to prevent such destruction, loss, or theft, or (iii) the TWC Equipment is damaged (excluding equipment malfunction through no fault of my own) while in my possession, whether or not due to circumstances beyond my reasonable control, and even if I exercised due care to prevent such damage. I agree that these liquidated damages are reasonable in light of the problem of theft of cable services; the existence of a "black market" in TWC Equipment; the ability of third parties to steal Services with unlawfully obtained TWC Equipment causing loss of revenues for installation and service fees; and the difficulty in determining the actual damages that arise from the unauthorized tampering with, loss, destruction, or theft of TWC Equipment. I agree to return any damaged TWC Equipment to TWC.

(h) I agree that TWC may place equipment and cables on my premises to facilitate the provision of Services to me and to other locations in my area. The Easement granted under this Section 3(h) will survive the termination of this Agreement until the date that is one year from the date on which I first notify TWC in writing that I am revoking such Easement.

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4. Use of Services; TWC Equipment and Software

- (e) I agree that TWC has the right to add to, modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements). I further agree that my ISP (and, if applicable, OLP) has the right to add to, modify, or delete any aspect, feature or requirement of the HSD Services (including content, price and system requirements). If TWC changes its equipment requirements with respect to any Services, I acknowledge that I may not be able to receive such Services utilizing my then-current equipment. Upon any such change, my continued use of Services will constitute my consent to such change and my agreement to continue to receive the relevant Services, as so changed, pursuant to this Agreement, the Terms of Use and the Tariffs. If I participate in a promotional offer for any Services that covers a specified period of time, I agree that I am assured only that I will be charged the promotional price for such Services during the time specified. I agree that TWC shall have the right to add to, modify, or delete any aspect, feature or requirement of the relevant Services, other than the price I am charged, during such promotional period.
- (f) I agree that the Services I have requested are residential Services, offered for reasonable personal, non-commercial use only. I will not resell or redistribute (whether for a fee or otherwise) the Services, or any portion thereof, or charge others to use the Services, or any portion thereof. Among other things:
- (i) If I receive Video Services, I agree not to use the Services for the redistribution or retransmission of programming or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of the Services to transmit or distribute the Video Services, or any portion thereof, to (or to provide or permit access by) persons outside the location identified in the Work Order (even if to a limited group of people or to other residences that I own or have the right to use), will constitute an enterprise purpose. I acknowledge that programs and other materials that I receive as part of the Video Services remain part of the Video Services even if I record or capture all or a portion of any such program or material in a data file or on a hard drive, DVR or similar device.
- (ii) If I receive Digital Phone Services, I agree not to use the Services for telemarketing, call center, medical transcription or facsimile broadcasting Services or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of the Services to make available my Digital Phone Services, or any portion thereof, to (or to provide or permit access by) persons outside the location identified in the Work Order (even if to a limited group of people or to other residences that I own or have the right to use), will constitute an enterprise purpose.
- (iii) If I receive HSD Services, I agree not to use the HSD Services for operation

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- as an Internet service provider, for the hosting of websites (other than as expressly permitted as part of the HSD Services) or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of any form of transmitter or which area relevant that enables persons or entities outside the location identified in the Work Order to use my Services, whether or not a fee is sought, will constitute an enterprise purpose. Furthermore, if I use a wireless network within my residence, I will limit wireless access to the HSD Services (by establishing and using a secure password or similar means) to the members of my household.
- (c) Theft or willful damage, alteration, or destruction of TWC Equipment, or unauthorized reception, theft or diversion of Services, or assisting such theft, diversion, or unauthorized reception is a breach of this Agreement and potentially punishable under law (including by way of statutory damages, the inferior imprisonment). Nothing in this Agreement, including Section 3(g) above, shall prevent TWC from enforcing any rights it has with respect to theft or unauthorized tampering of Services or TWC Equipment under applicable law.
- (d) I will not, nor will I allow others to, open, alter, misuse, tamper with or remove the TWC Equipment as set forth in the Tariffs. I will not, nor will I allow others to, remove any markings or labels from the TWC Equipment indicating TWC ownership or serial or identity numbers. I will safeguard the TWC Equipment from loss or damage of any kind, including accidents, breakage or house fire, and will not permit anyone other than an authorized representative of TWC to perform any work on the TWC Equipment.
- (e) I agree that to the extent any Software is licensed (or sublicensed) to me by TWC, such Software is provided for the limited purpose of facilitating my use of the Services as described in this Agreement. I will not engage in, or permit, any additional copying, or any translation, reverse engineering or reverse compiling, disassembly or modification of or preparation of any derivative works based on the Software, all of which are prohibited. I will return or destroy all Software provided by TWC and any related written materials promptly upon termination of the associated Services to me for any reason. Software licensed to me by my ISP or OLP, for instance my ISP's or OLP's client or browser software, is licensed under the ISP's terms or OLP's terms, as applicable, and is not the responsibility of TWC.
- (f) I agree that I will use the Services for lawful purposes only, and in accordance with this Agreement, the Terms of Use and the Tariffs.
- (g) I agree to be responsible for protecting the confidentiality of my screen names, passwords, personal identification numbers (PINs), parental control passwords or codes, and any other security measures made available, recommended or required by Time Warner Cable. I also acknowledge that TWC's Services may from time to time include interactive features, the use of which may result in the transmission to, and use by, TWC or certain third parties of

Information that may constitute personally identifiable information (as such term is used in the Federal Communications Act of 1934) about me and for which TWC may be required, under the Federal Communications Act of 1934, to obtain my consent. I agree that TWC may seek such consents for indications of my election to "opt in" to certain TWC programs) electronically, including through the use of a "text through" screen, and that TWC is entitled to assume that any such consent or opt-in election communicated through my Services or from the location at which I receive the Services is my consent or opt-in election or has been authorized by me.

(b) I agree that TWC has no liability for the completeness, accuracy or truth of the programs or information it transmits.

g. Special Provisions Regarding Digital Phone Service

(a) I acknowledge that the voice-enabled cable modem used to provide the Digital Phone Service is electrically powered and that the Digital Phone Service, including the ability to access 911 Services and home security and medical monitoring Services, may not operate in the event of an electrical power outage or if my broadband cable connection is disrupted or not operating. I acknowledge that, in the event of a power outage in my home, my battery included in my voice-enabled cable modem may enable back-up service for a limited period of time or not at all, depending on the circumstances, and that inclusion of the battery does not ensure that Digital Phone Service will be available in all circumstances. I also acknowledge that, in the event of a loss of power that disrupts my local TWC cable system, the battery in my voice-enabled cable modem will not provide back-up service and the Digital Phone Service will not be available.

(b) I agree that TWC will not be responsible for any losses or damages arising as a result of the unavailability of the Digital Phone Service, including the inability to reach 911 or other emergency Services, or the inability to contact my home security system or remote medical monitoring service provider. I acknowledge that TWC does not guarantee that the Digital Phone Service will operate with my home security and/or medical monitoring systems, and that I must contact my home security or medical monitoring provider in order to test my system's operation with the Digital Phone Service. I agree that I am responsible for the cost of any such testing or any fees for configuring my home security or medical monitoring system to work with the Digital Phone Service.

(c) The location and address associated with my Digital Phone Service will be the address identified on the Work Order. I acknowledge that, under Section 4(d) of this Agreement, I am not permitted to move TWC Equipment from the location and address in which it has been installed. Furthermore, if I move my voice-enabled cable modem to an address different than that identified on the Work Order, calls from such modem to 911 will appear to 911 emergency services operation to be coming from the address identified on the Work Order and not the new address.

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(c) I acknowledge that the existing telephone wiring inside my home may not support both Digital Phone Service and digital subscriber line (DSL) service. Therefore, if I intend to use Digital Phone Service on all of my phone jacks, I may be required to maintain separate wiring, not provided by TWC, within my home specifically for DSL service or to disconnect my DSL service prior to reaching the Digital Phone Service over my existing in-home wiring.

(d) I agree to provide TWC and its authorized agents with access to my telephone inside wiring at the Network Interface Device or at some other minimum point of entry in order to provide the Digital Phone Service over my existing in-home wiring.

(e) I acknowledge that the Digital Phone Service may not be compatible with certain data transmission Services, including but not limited to fax transmissions and dial-up Internet access and that I may be required to maintain a separate telephone line, not provided by TWC, in order to access such Services.

h. Special Provisions Regarding HSD Service

(a) Terms of Service. I acknowledge that the HSD Service is offered on a tiered basis and that each tier has "throughput" limits (i.e., limits on the maximum rate at which I may send and receive data at any time), "consumption" limits (i.e., limits on the amount of data that I may send or receive during the course of a month or over shorter periods) and other similar limits, all as set forth in the price list or the Terms of Use. I agree that TWC or ISP may change the throughput, consumption and other applicable limits of any tier(s) by amending the price list or Terms of Use. My continued use of the HSD Service will constitute my acceptance of any new limits. I also agree that TWC may use technical means, including but not limited to suspending or reducing the speed of my service, to ensure compliance with these limits and the Terms of Use, and that TWC or ISP may move me to a higher tier of HSD service (which may result in higher monthly charges) or impose other charges and fees if my use exceeds these limits. I further agree that TWC and ISP have the right to monitor my usage patterns to facilitate the provision of the HSD Service and to ensure my compliance with the Terms of Use. TWC or ISP may take such steps as it determines appropriate in the event my usage of the HSD Service does not comply with the terms of Use, including applicable consumption limits.

(b) Reproduction.

(i) I acknowledge that material posted or transmitted through the HSD Service may be copied, republished or distributed by third parties, and that the TWC Parties will not be responsible for any harm resulting from such actions.

(ii) I grant to TWC, and I represent, warrant and covenant that I have all necessary rights to so grant, the non-exclusive, worldwide, royalty-free, perpetual, irrevocable, right and license to use, reproduce, modify, adapt, publish, translate, distribute, perform and display in any media all material posted on the public areas of the HSD Service via my account

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and/or to incorporate the same in other works, but only for purposes consistent with operation and promotion of the HSD Service.

(a) I agree that unsolicited email, or "spam," is a nuisance and that TWC and my ISP (and, if applicable, my OLP) are entitled to establish limits on the volume of email that I send. Such volume limits may be set by reference to a number of emails per day, week, month or year.

(b) Continuity of Service. In order to provide continuity of service to me, if my choice of ISP is no longer available over my local TWC cable system, I agree that TWC may provide me with an alternative ISP. In such event, TWC will notify me of the date as of which I will begin receiving service from the alternative ISP, the provision of which shall also be governed by this Agreement, and TWC will provide to me a price list for such alternative ISP service. I will have the right at any time to terminate the alternative ISP or to change my subscription to any other ISP then offered by TWC.

(c) Unfiltered Internet Access. I acknowledge that the ISP Service provides a connection to the Internet that may be unfiltered, and that the TWC Parties retain control over assume responsibility for any content on the Internet or content that is posted by a subscriber. Although TWC or my ISP or OLP may make available certain parental control features, I acknowledge that such parental control features may not be entirely effective or foolproof and that, notwithstanding such features, I or members of my household may be exposed to unfiltered content.

(d) Use of ISP and OLP Service. I agree that TWC and/or my ISP and/or OLP has the right, but not the obligation, to edit, refuse to post or transmit, request removal of, or remove or block any material transmitted through, submitted to or posted on the HSD Service, if it determines in its discretion that the material is unacceptable or violates the terms of this Agreement, any TWC consumption limits or any other terms of Use. Such material might include personal home pages and links to other sites. In addition, I agree that, under such circumstances, TWC may suspend my account, take other action to prevent me from utilizing certain account privileges (e.g., home pages) or cancel my account without prior notification. I also agree that TWC and/or ISP and/or OLP may suspend or cancel my account for using all or part of the HSD Service to post content to the Internet or to engage in "peer to peer" file exchanges or other forms of file exchanges that violate this Agreement or the Terms of Use.

(e) Responsibility for HSD Service. Each of TWC and my ISP (and, if applicable, my OLP) has responsibilities for the HSD Service. I acknowledge that each of my ISP and OLP may have one or more separate agreements, policies or other terms covering my rights and obligations with regard to the HSD Service ("ISP Terms" or "OLP Terms," as applicable) that are also binding on me. This Agreement does not cover any ISP or OLP features or Services that are not dependent upon distribution over TWC's cable systems (for example, dial up access or my use of ISP or OLP software that enables access to ISP or OLP features or Services through non-TWC access means) or that may otherwise be

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provided to me by ISP or OLP separately from the HSD Service under the ISP Terms or OLP Terms, as applicable. In the event of termination of the HSD Service, I must also contact my ISP (and, if applicable, my OLP) to ensure that these other features or Services (such as dial-up access) are properly continued or discontinued.

(f) Computer Requirements. I agree that each Computer will need to meet certain minimum hardware and software requirements that will be specified for the HSD Service, and that such requirements may be changed from time to time by TWC or my ISP or OLP.

7. Support, Service and Repairs

(a) My Services include the right to request reasonable service and maintenance calls to check and correct problems with the Services. TWC will, at its own expense, repair damage to or at TWC's option, replace TWC Equipment, and otherwise attempt to correct interruptions of the Services, due to reasonable TWC Equipment wear and tear or technical malfunction of the system or network operated by TWC. The Subscriber retains certain details on contacting TWC for this support.

(b) Unless I have obtained a TWC service protection plan (if available in my area), I agree that I am responsible for all wiring, equipment and related software installed in my residence that is not TWC Equipment or TWC-licensed Software and TWC will have no obligation to install, connect, support, maintain, repair or replace any Computer, television, telephone or telephone answering device, audiovisual recording or playback device (e.g., VCR, DVR, DVD), audio equipment, any software, or any cable modem, cabling or other equipment (other than TWC Equipment or TWC-licensed Software). TWC will not support, repair, replace, or maintain any Network Interface Card, regardless of whether provided and installed by TWC.

(c) I agree that TWC has no responsibility for the operation of any equipment, software or service other than the Services, the TWC Equipment and the TWC-licensed Software. For instance, I acknowledge that certain commercially available televisions, converter boxes and recording devices, which may be identified by their manufacturers as "cable ready" or "digital cable ready," may not be able to receive or utilize all available Services without the addition of a TWC converter box or other TWC Equipment for which a fee may be charged. If I receive HSD Service, TWC has no responsibility to support, maintain or repair any equipment, software or service that I elect to use in connection with the HSD Service, whether provided by my ISP or OLP or a third party. For assistance with technical problems arising from such equipment, software or Services, I should refer to the Subscriber Materials for information regarding the technical support provided by my ISP or OLP or to the support area of the ISP or OLP or to the relevant third party's material.

(d) TWC determines that non-TWC cabling or equipment connecting my residence to TWC Equipment installed on the side of or adjacent to my residence